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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/337,756	06/22/1999	HANS J. HANSEN	018733/0884	9359

7590 01/28/2004

FOLEY & LARDNER  
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WASHINGTON, DC 20007

EXAMINER
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SAUNDERS, DAVID A

ART UNIT	PAPER NUMBER
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1644

DATE MAILED: 01/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

337,750

Applicant(s)

HANSEN et al

Examiner

SAUNDERS

Group Art Unit

1644

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 10/20/03
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

## Disposition of Claims

- ☐ Claim(s) 1, 12-19, 30, 51-54 is/are pending in the application.
- ☐ Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1, 12-19, 30, 51 is/are rejected.
- ☒ Claim(s) 52-54 is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
  - ☐ received in this national stage application from the International Bureau (PCT Rule 1 7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

Office Action Summary

Amendment of 10/20/03 has been entered. Claims 1, 12-19, 30 and 51-54 are pending and under examination. The amendment has entered no new matter.

The following corrections pertain to the previous Office action:

On PTO-326, under **Disposition of Claims** “51-52” should have read as “51-54”.

The amendment has overcome previously stated issues as follows:

The rejection of claims under 35 USC 112, 2<sup>nd</sup> paragraph.

The rejections of claims under 35 USC 112, 1st paragraph.

The following rejections of record are maintained or modified as follows:

Claims 1, 12-16, 18-19, 30 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barbet et al (EP 0,263,046) or Goodwin et al (4,863,713), either in view of Bagshawe et al (5,683,694).

Claim 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barbet et al (EP 0,263,046) or Goodwin et al (4,863,713), either in view of Bagshawe et al (5,683,694) as applied to claim 1 above, and further in view of Wagner et al (5,503,987).

Applicant has argued the prior art rejections by searching a data base for publications of Barbet or of Goodwin that post date Bagshawe et al and showing that no publications were found that modify either primary reference in the manner taught by the combination with Bagshawe et al until 2001, after applicant's filing date. This argument is unconvincing because one of ordinary skill is presumed to be aware of the entire scope and contents of the prior art (Workshop Walls doctrine: In re Winslow 151 USPQ 48), at the time applicant filed. The combination of cited references render the claims obvious over prior art then available. That others may have not been aware of this art, or that they may have been aware of such but did not pursue the teachings

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thereof, does not render claims unobvious. Applicant has submitted no evidence that Barbet or Goodwin tried to arrive at applicant's invention and failed (In re Wright 193 USPQ 332). There is no evidence that these or other investigators taught away from the invention.

Applicant's arguments filed 10/20/03 have been fully considered but they are not persuasive.

The prior art of record does not suggest limitations of claims 52-54.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David A Saunders, PhD whose telephone number is 571-272-0849.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan, can be reached on at 571-272-0841.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-0507.

1/23/04 DAS

*David A Saunders*  
DAVID SAUNDERS  
PRIMARY EXAMINER  
ART UNIT 182-1644